Civ. A.A. (D)

1953 File No. 53

Examined

Legal DEPARTMENT

E BRANCH

Subject:— Civil Appeals and Applications

under the Bombay Divorce Act, 1947

E

1-14

File No. Civ. A.A. (Divorce) /53

684-E

Sd. Scott. Slip 24-B

ESS DELIVERY.
IMMEDIATE.

No.
Office of the
Government Pleader, High Court,
Bombay, 25nd November, 1952.

From

Shri H.M.Choksi, B.A.(Hons) LL.B.,
Government Pleader, High Court.

To

The Collector of Bijapur,
At : BIJAPUR.

Sub: Civil Application No. 1880 of 1952.

...

Sir,

With reference to the above subject, I have the honour to send herewith a copy of the above application with a request to send me affidavit of the authority or authorities concerned (with five copies thereof) in reply to the petition along with your instructions so as to reach me by Thursday the 27th November 1952. The above application will come for hearing on Monday the 1st December 1952 or thereafter. Further I have to request you to obtain a formal sanction of Government for the defence of the same.

A

Yours faithfully,

Sd/- V.T.Gambhirwala.

for Government Pleader, High Court.

L. D.
25 NOV 1952

No. 8497
Bombay, 25nd November, 1952.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay along with the copy of petition, with a request to accord a formal sanction for the defence of the abovementioned application.

V Gambhirwala
for Government Pleader, High Court.

RY TO GOVERNMENT
2859
E/26-11-52

Said

Please see copy of Petition at pp.3 onwards. It is not understood why the State of Bom is made a party to the proceedings. It also does not appear that "A" i.e. G.P. Letter to Coll. is necessary as the decree was passed by the C.J. (J.D.) Bagalkot. G.P. H.C. may however be requested to put in formal appearance on behalf of the State of Bom and submit to the Court's orders.

Prof
26/11/52

He may also be required to represent to the Court that Govt. is unnecessarily being made a party

27/11

3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Civil Application No. 1880 of 1952.

District: BIJAPUR.

(Under Article 227 of the Constitution of India.).

Indirabai w/o Anantrao Kulkarni of
Bijapur. ... . Petitioner.

V/s.

1. Pralhad Hanmant Kulkarni,
Assistant Booking Clerk, Southern-Railway, Station Bagalkot, Dist: Bijapur.

2. Sunanda w/o Pralhad Hanmant Kulkarni
now residing in the house of Ramchandra Hanmant Kulkarni, At Athani, Dist: Belgaum.

3. Radhabai, alleged to be residing with Pralhad Hanmant Kulkarni, Opponent No.1 at Bagalkot.

4. The State of Bombay, representing the Civil Judge, J.D. Bagalkot. ... ... Opponents.

The humble petition of the
Petitioner above named,

Most Respectfully Sheweth:-

1. That the opponent No. 2 Sunandas is the daughter of the petitioner, now aged 19 years,. She was married to the opponent No. 1 on 1-1-1951 at Bijapur. After her marriage she stayed with her husband Opponent No. 1, at Bagalkot.

2. On the 22nd March 1952, a plaint purporting to

have been signed by the opponent No. 2 was presented to the District Court at Bijapur. By this plaint, the opponent No.2 prayed for a divorce against her husband the opponent No. 1. The ground for divorce alleged was that the opponent No. 1 has kept in his house as his mistress one Radhabai, opponent No.3. The plaint was transferred to the Court of the Civil Judge J.D. at Bagalkot on 27-3-1952.

3. That on 10-4-1952, the said plaint was admitted in the Bagalkot Court in suit No.135 of 1952. On the same day the suit was fixed for settlement of issues. It appears from the record of the case that a purshis Exh.6 was filed by the opponent No.1 agreeing to give divorce and on that the learned Civil Judge passed a decree for divorce.

4. The petitioner who was residing at Bijapur, on coming to know of this happening, went to Bagalkot. She was not able to contact her daughter the opponent No.2 as she was kept in wrongful confinement by the opponent No.1 with the aid of his relatives. She was moved from place to place and it now transpires that she is made to stay with Ramachandra Hanmant Kulkarni, the brother of opponent No.1 who stays at Athani who is unmarried and aged about 22. The petitioner learnt that the opponent No.2 was wrongfully confined and kept in terror and various statements are obtained from her which are not true. The petitioner understands that her signature was taken upon a blank paper upon which the plaint was written which was later on presented to the Court.

5. That the petitioner further understands that there is no person of the name of Radhabai... ... .. The 2nd defendant in the said suit. The whole story mentioned in the plaint about Radhabai is false and fictious.

6. That the petitioner has taken out Criminal proceedings against the opponent No.1 and others for preparing a false plaint and for wrongful confinement of opponent No.2 by the said persons.

7. That the opponent No.2 is a young and inexperienced girl. She has not understood the implications of the decree for divorce passed in the said suit. In one of the statements made in the Criminal proceedings she says that she would live with the opponent No.1 as h's dutiful wife. She is not allowed the to contact the petitioner and it is not likely that she would take anyproceedings to set aside the fraudulent decree which affects her status seriously.

8. The petitioner submits that in the passing of the decree in the said suit the Court has not foolowed the provisions of the Bombay Hindu Divorce Act 1947 - particularly Section 7 thereof which provides that the Court must be satisfied of the existence of the ground set forth in the plaint. In the said proceedings the summons to the defendants were not issued or served. The parties were not examined and the Court also does does not state that it was satisfied of the existence of the ground mentioned in the plaint.

9. That the said suit was a frusadulent and collusive suit instituted at the instance of the opponent No.1 and the decree was passed therein without the court being satisfied of the truth of the allegation in the plaint. The said -- Radhabai is a fiction person. No notice was issued to and served upon her. In the purshis, opponent No.1 does not admit that Radhabai lived with him. He only states that he is willing to give divorce to opponent No.2. That neither of parties to the suit was examined by the Court in the said suit.

9 9

10. The petitioner begs to apply to this Hon'ble Court under Article 227 of the Constitution of India and prays that the record and the proceedings of the case be called for and sets a side the said decree dated 10-4-1952 passed in Civil Suit No.135 of 1952 in the Court of the Civil Judge, J.D.Bagalkot.

And for which of kindness the petitioner as in duty bound shall ever pray.

Bombay.

-11-1962. Advocate for the Petitioner.

Immediate.

No. 19993/E

Legal Department,
Bombay Castle (Bombay No.1), 28th November 1952.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Civil Application No. 1880 of 1952.

Sir,

With reference to your endorsement No. 8497, dated the 25th November 1952, on the above subject, I am directed to request you to put in formal appearance on behalf of the State of Bombay and to submit to the orders of the Court. It does not appear that any affidavit on behalf of any authority need be filed in this case. You may also point out to the Court that Government is unnecessarily being made a party in these proceedings.

Yours faithfully,

for Secretary to Government.

BM.
28.11.

Secretary after issue
Awaiting names of petitioners

RBN
29/4
Lodged

RBN 29/4

Should we keep these
notes in the Register

VRW
2.7.14

13 4

Letter.

No.LAW.
Bijapur, 26-11-1952.

To

The Remembrancer of Legal Affairs,
BOMBAY.

Sub : Civil Application No.1880 of 1952.

...

To go by Express Dy

The Govt. Pleader, High Court, Bombay has informed in his letter No.8496 dated 25-11-52 (copy -- enclosed) to send the papers of the case along with the affidavit of the authority or authorities concerned. Accordingly the District Judge, Bijapur has been requested to send the papers of the case along with the affidavits and instructions in this connection. I therefore request you to move Government to sanction the defence of the -- application at an early date.

For Collector, Bijapur.

L. D.
25 NOV 1952

SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
No. 28960
No. E/29/52

Sir,
Necessary instructions have been given to G.P. High Court. No further action is req
29/11

15 45

Express Letter.
Immediate.

No.2496.

Office of the Govt. Pleader, High Court
Bombay, 25th November 1952

From

Shri H.M. Choksi, B.A.(Hons) LL.B.,
Govt. Pleader, High Court.

To

The Collector of Bijapur At Bijapur.

Sub : Civil Application No.1830 of 1952.

...

Sir,

With reference to the above subject, I have the honour to send herewith a copy of the above application with a request to send me affidavit of the authority or authorities concerned (with five copies thereof) in reply to the petition along with your instructions so as to reach me by Thursday -- the 27th November 1952. The above application will come for hearing on Monday the 1st December 1952 or thereafter. Further I have to request you to obtain a formal sanction of Govt. for the defence of the same.

Yours faithfully.
Sd/-xxx
For Govt. Pleader High Court.

---

17 4/

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Civil Application No.1280 of 1952.

District Bijapur.

(Under Article 227 of the Constitution of India.).

Indirabai w/o Anantrao Kulkarni of Bijapur... Petitioner.

Vs.

1. Pralhad Hanmant Kulkarni,
Asstt. Booking Clerk, Southern Rlys.
Station Bagalkot, Dist. Bijapur.

2. Sunanda w/o Pralhad Hanmant Kulkarni
now residing in the house of Ramachandra
Hanmant Kulkarni, At Athani Dist.Belgaum.

3. Radhabai alleged to be residing with Pralhad
Hanmant Kulkarni Opponent No.1 at Bagalkot.

4. The State of Bombay, representing the
Civil Judge, J.D. Bagalkot. ... Opponents.

The humble petition of the petitioner
above named.

Most respectfully Sheweth :-

1. That the opponent No.2 Sunanda is the daughter of the petitioner now aged 19 years. She was married to the opponent No.1 on 1-1-1951 at Bijapur. After her marriage she stayed with her husband opponent no.1 at Bagalkot.

2. On the 22nd March 1952, a plaint purporting to have been signed by the opponent no.2 was presented to the District Court at Bijapur. By this plaint, the opponent No.2 prayed for a divorce against her husband the opponent No.1. The -- ground for divorce alleged was that the opponent No.1 has kept in his house as his mistress one Radhabai, opponent No.3. The plaint was transferred to the Court of the Civil Judge, J.D. at Bagalkot on 27-3-1952.

3. That on 10-4-52 the said plaint was admitted in the Bagalkot Court in suit No.135 of 1952. On the same day the suit was fixed for settlement of issues. It appears from the record of the case that a pursis Exh.6 was filed by the -- opponent No.1 agreeing to give divorce and on that the --- learned Civil Judge passed a decree for divorce.

4. The petitioner who was residing at Bijapur on coming to know of this happening went to Bagalkot. She was not able to contact her daughter the opponent No.2 as she was kept in

in wrongful confinementby the opponent No.1 with the aid of his relatives. She was moved from place to place and it now transpires that she is made to stay with -- Ramachandra Hanmant Kulkarni, the brother of opponent No.1 who stays at Athani who isunmarried and aged about 22. The petitioner learnt that the opponent No.2 was wrongfully confined and kept in terror and various statements are -- obtained from her which are not true. The petitioner -- understands that her signature was taken upon a blank paper upon which the plaint was written which was later on presented to the Court.

5. That the petitioner further understands that there is no person of the name of Radhabai .... The second defendant in the said suit. The whole story mentioned in the plaint about Radhabai is false and -- fictious.

6. That the petitioner has taken out criminal proceedings against the opponent No.1 and others for preparing a false plaint and for wrongful confinement of opponent no.2 by the said persons.

7. That the opponent no.2 is a young and inexperienced girl She has not understood the implications of the decree for divorce, passed in the said suit. In one of the statements made in the criminal proceedings she says that she would live with the -- opponent No.1 as his dutiful wife. She is not allowed to contact the petitioner and it is not likely that she would take -- any proceedings to set aside the fraudulent decree which affects her status seriously.

8. The petitioner submits that in the passing of the decree in the said suit the Court has not followed the provisions of the Bombay Hindu Divorce Act, 1947 - particularly section 7 thereof which provides that the Court must be satisfied of the existence of a ground set forth in the plaint. In the said proceedings the summons to the defendents were not issued or served. The parties were not examined and the Court also does not state -- that it was satisfied of the existence of the ground mentioned--

19 19

mentioned in the plaint.

9. That the said suit was a fraudulent and collusive suit instituted at the instance of the opponent No.1 and the decree was passed therein without the court being satisfied of the truth of the allegation in the plaint. The said Radhabai is a fiction person. No notice was issued to and served upon her. In the pursis, opponent No.1 does not admit that Radhabai lived with him. He only states that he is willing to give divorce to opponent No.2. That neither of parties to the suit was examined by the Court in the said suit.

10. The petitioner begs to apply to this Hon'ble Court under Article 227 of the Constitution of India and prays that the record and the proceedings of the case be called for and set aside the said decree dated 10-4-1952 passed in Civil Suit No. 135 of 1952 in the Court of the Civil Judge, J.D. Bagalkot.

And for which of kindness the petitioner as in duty bound shall every pray.

Bombay

-11-1952. Advocate for the petitioner.

21 77

Letter.

No.LAW.218.
Bijapur, 6 -12-1952.

To

The Government Pleader,
High Court, BOMBAY.

Sub : Civil Application No. 1880 of 1952.
Indirabai w/o Anantrao
Kulkarni.. ... Petitioner.
Vs,
The Civil Judge, Jr.Dn.
Bagalkot & Others. ...

Reference this office No.LAW dated 27-11-1952.

A copy of the letter No.9572 of 3-12-1952 and the copies of the proceedings in Suit No. 135/52 received from the District Judge, Bijapur are sent herewith for conducting the above said Civil Application in the High Court. Further instructions if required may please be obtained from the -- District Judge, Bijapur as the Civil Judge, Bagalkot is --- principally concerned in respect of which the Civil Application is filed in the High Court.

3068/
E.19-12-52

The District Judge has also requested to obtain a draft of an affidavit from you and as to who should make an affidevit in connection with the said Civil Application. I therefore request you to give clear instructions to the Dist. Judge Bijapur for taking further action in the matter.

For Collector, Bijapur.

Copy submitted to R.L.A., Bombay for information.

Copy f.w.c.s to the District Judge, Bijapur for information.

No. 1398 of 1953. 23 Bentz

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY.

Special Civil Application No. 1880 of 1952.

(Under Article 227 of the Constitution of India.)

Indirabai w/o Anantrao Kulkarni. ----- Petitioner.

versus.

1. Pralhad Hanmant Kulkarni, Assistant Booking Clerk, Southern Railway Station, Bagalkot, Dist-Bijapur.
2. Sunandabai w/o Pralhad Hanmant Kulkarni now residing in the house of Ramchandra Hanmant Kulkarni, at Athani, District Belgaum.
3. Radhabai, alleged to be residing with Pralhad Hanmant Kulkarni, opponent No.1 of Bagalkot.
4. The state of Bombay, representing the Joint Civil Judge, J.D., Bagalkot.

Opponents.

File No. 29 APR 19.. 20529

LEGAL DEPARTMENT 30 APR 1953

SECRETARY TO GOVERNMENT LEGAL DEPARTMENT File No. 10707 Sub No. E Branch 1/5/53

To.

The Chief Secretary to the Government of the State of Bom-bay representing the Joint Civil Judge, Junior Division, Bagalkot.

Whereas a Rule nisi was granted by this court on the 10th day of November 1952 for the opponents to whow cause why a writ under Article 227 of the Constitution of India, callir for the record and the proceedings of the case and after examining ~~and~~ legality and validity of the same, a writ setting aside the decree dated 10-4-52 passed by the Civil Judge, Junior Division, Bagalkot in Civil Suit No. 135 of 52, should not be issued.

And whereas upon hearing Mr. N.M.Hungund, Advocate for the applicant and the Govt. Pleader for opponent No.4, Mr. G.A.Kamte, Advocate for opponent No.1 being absent, there being no appearance for opponent No.2 though duly served, and the notice to opponent No.3 having been returned unserved, the Court passed the following further order:-

" For the reasons stated in the accompanying judgment the Court makes the Rule absolute, sets aside the decree passed by the lower court and directs that the suit should be tried on merits in accordance with law. The

suit should be tried by some Judge at Bagalkot other than the Judge who passed the decree in the suit. The Court further directs that if the Court thinks it desirable in the interests of Justice, it should examine the mother Mrs. Indirabai A.Kulkarni of the second opponent Sunanda P. Kulkarni as a Court witness.

No order as to costs.

It is accordingly ordered that the decree passed by the Civil Judge, Junior Division, Bagalkot in Civil Suit No. 135 of 1952 is hereby set aside and directed that the suit should be tried on merits in accordance with law by some Judge at Bagalkot other than the Judge who passed the decree in the said suit. It is further directed that if the Court thinks it desirable in the interests of the Justice, it should examine Mrs. Indirabai A.Kulkarni, the mother of the second opponent-Sunanda P.Kulkarni, as a court witness.

No order as to costs.

Witness M.C.Chagla, Esquire, Chief Justice at Bombay aforesaid, this 25th day of March One thousand nine Hundred and fifty-three.

BY THE COURT,

For DEPUTY REGISTRAR

This 27th day of April 1953

A 180.

Typed by Mr.S.D.Paradkar.

Examined by Mr. O.R.Kelkar

Read by Mr. M.W.Karmarkar

	Rs.As.Ps.Fls.8.
Copying and Comparing charges:-	3- 0- 0
Paper charges:-	0- 0- 6
Total Rs:-	3- 0- 6

Rupees three, annas nil and pies six only.

Superintendent, Decree Department
6-5-1953.

6-4-53
6-5-53
6-7-53

Assistant Superintendent

HIGH COURT APPELLATE SIDE
CERTIFIED COPY
BOMBAY

Special Civil Application No.1880 of 1952.

(Under Article 227 of the Constitution of India.)

& Indirabai w/o Anantrao Kulkarni;----Petitioner

versus

Pralhad Hanmant Kulkarni;

and another ------Opponents.

Application praying under Article 227 of the Constitution of India to call for the Records and Proceedings in Civil Suit No.135 of 1952 in the Court of the Civil Judge, Junior Division, Bagalkot and to set aside the decree dated 10th April 1952 passed in the same.

Mr.N.M.Hungund, Advocate for the Applicant.

Mr.G.A.Kamte, Advocate for Opponent No.1.

The Government Pleader for Opponent No.4.

Coram: Chagla, C.J. and Dixit, J.

25th March 1953.

Oral Judgment: (Per Chagla, C.J.)

This is a petition filed by the mother of the second opponent who filed a petition for divorce against her husband in the Court of the Civil Judge, J.D. Bagalkot

Bagalkot and the ground that she alleged was that her husband had kept Radhabai,the third opponent before us,as his confubine. The matter came on before the learned Judge and he fixed 10th April 1952 for settlement of issues.On that x day a purshis was put in by the defendant by which he agreed to give the plaintiff x divorce as claimed by her.The purshis further stated that "From this day the plaintiff shall have no rights of wife on husband i.e.conjugal,nor the defendant No.1 on plaintiff.The marriage between the plaintiff and defendant No.1 is dissolved this day".The question of alimony to be paid and the question of costs were left to the discretion of the Court. The learned Judge acted on this purshis and passed a decree for dissolution of marriage and he fixed alimony to be paid by the husband to the wife xxx at Rs.14 and he ordered that the parties should bear their own costs. Now,it is clear that a decree in a matrimonial suit which is a judgment in rem cannot be passed by consent.The Hindu Divorce Act makes a provision under section 7 which is to the effect that "in any suit under section 3 or 4 whether defended or not,if the Court be satisfied that any of the grounds set forth in either of those sections for granting relief exists,the Court shall decree such relief accordingly".Therefore,it is only on theCourt being a satisfied that the ground under section 3(f) viz.that a husband has kept a concubine,exists that the Court can pass a decree for dissolution.In this case it is clear from the judgment of the learned Judge that he was not satisfied at all because no evidence was led before him,no materials were placed before him and he merely acted on the consent of parties.The Hindu Divorce Act does not permit a husband or wife to obtain dissolution of marriage by consent.A wife can obtain divorce provided she satisfies the Court that one of the grounds mentioned in section 3 eixsts and whether the defendant consents or not,whether the defendant defends the suit or not,the Court itself has to be satisfied that the ground mentioned in section 3 exists.Therefore,in our opinion,the Court acted with material irregularity in passing a decree on the consent parties.It is obvious that this decree cannot stand.As neither

27

party to the decree obviously would appeal from that decree nor can the decree be challenged according to the ordinary procedure, the mother of the girl has come before us and asked us to exercise our powers of superintendence under Article 227 of the Constitution. In our opinion, this is a clear case where we should exercise our powers under Article 227. We would, therefore, set aside the decree passed by the learned Judge and direct that this suit should be tried on merits in accordance with law. We also direct that the suit should be tried by some Judge at Bagalkot other than the Judge who passed this decree in the suit.

Mr. Hungund on behalf of the mother wants us to give some direction whereby the interest of her daughter would be protected at the trial. It is not possible for us to allow the mother to intervene in the suit or to appear at the trial because there is no provision for the appearance of the mother of a party under the Hindu Divorce Act. But we will give this direction that if the Court thinks it desirable in the interests of justice, it can examine the mother as a Court witness. No order as to costs.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

By order of the Court,
Sd/- V.R. Gadkari.
Deputy Registrar.

True copy

For Deputy Registrar.

The 6th day of May 1953.

K·180.-

Typed by Mr.S.D.Paradkar.

Examined by Mr.

Read by Mr.

29

	Rs.As.Ps.Fls.4
Copying and Comparing charges:-	1- 8- 0
Paper charges:-	0- 0- 3
Total Rs:-	1- 8- 3

Rupee one,annas eight and pies three only.

Superintendent,Decree Department.
6 -5-1953.

Application for copy 6-4-53
Copy ready on 6-5-53
Copy delivered on 6-7-53
Sent by V.P.P. Regd Post

Assistant Secretary

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the case of:-

Indirabai w/o Anantrao Kulkarni; -----Petitioner.

versus

1.Pralhad Hanmant Kulkarni; 2 Sunanda w/o Pralhad Hanmant Kulkarni; 3 Radhabai alleged to be residing with Pralhad Hanmant Kulkarni; 4.The State of Bombay representing the Civil Judge,Junior Division,Bagalkot;

Being Civil Application No.1880 of 1952 Under Article 227 of the Constitution of India.

Mr.N.M.Hungund,Advocate for the Applicant.

Mr.G.A.Kamte,for Opponent No.1.

The Government Pleader for Opponent No.4.

Coram:-Chagla,C.J. and Dixit,J.

For the reasons stated in the accompanying Judgment,the Court makes the Rule absolute ,sets aside the decree passed by the lower Court and directs that the Suit should be tried on merits in accordance with law.The suit should be tried by some Judge at Bagalkot other than the Judge who passed the decree in the suit.The Court further directs that if the Court thinks it desirable in the interests of justice it should examine the mother Mrs.Indirabai A.Kulkarni,of the second Opponent Sunanda P.Kulkarni as a Court witness.

No order as to costs.

Sd/-V.R.Gadkari.
Deputy Registrar.

25-3-1953.

36 30

Bill of Costs in the High Court.

By the Applicant	Rs.As.Ps.
Stamps for Application	5- 0- 0
Stamps for Vakalatnama	2- 8- 0
Bhatta for Process	12- 8- 0
Advocate's Fee	45- 0- 0
Stamp for affidavit	0- 5- 0
Total Rs:-	65- 5- 0

By the Opponent No.1.	Rs.As.Ps.
Stamps for Vakalatnama	2- 8- 0
Advocate's Fee	45- 0- 0
Total Rs:-	47- 8- 0

By the Opponent No.4	Rs.As.Ps.
Stamps for Vakalatnama (G.P.appears.)	0- 0- 0
Advocate's Fee	45- 0- 0
Total Rs:	45- 0- 0

Sd/- V.R.Gadkari.

(Seal)

Deputy Registrar.

The 25th day of March 1953.

True copy

For Deputy Registrar.

The 6th day of May 1953.

New Divorce

Civil A & A (Div.)